the tracks raised about seven feet, and the street below was put in proper condition by the defendant. Subsequently, the street becoming in need of repair, the city passed an ordinance requiring the defendant to repair it. On its refusal mandamus was brought to compel the defendant so to repair. *Held,* not being required by its charter to maintain, but only to restore, a highway intersected, the duty of the defendant was ended when it restored the highway. *People ex rel. City of Chicago* v. *Ill. Cent. R. R. Co.* (1908), — Ill. —, 85 N. E. 606.

The authorities are almost unanimous in the view that the duty to restore a highway is a continuing one. *Paducah & E. R.* v. *Commonwealth,* 80 Ky. 147; *Chi., R. I. & Pac. R.* v. *Moffitt,* 75 Ill. 524; *Southern Ry. Co.* v. *Morris,* 143 Ala. 628; *Burritt* v. *N. H., etc., & N. Co.,* 42 Conn. 174; *Cooke* v. *B. & L. R.,* 133 Mass. 185; *Wellcome* v. *Inhabitants,* 51 Me. 313; *Minn.* v. *St. Paul, etc., Ry.,* 35 Minn. 131; *City of Kan.* v. *Kan. City Belt Ry.,* 102 Mo. 633; *Hatch, Commr.,* v. *S. B. & N. Y. R. R.,* 50 Hun 64. To maintain a crossing is a common law duty and is not abridged by the absence of conditions. *Maltby* v. *C. & W. M. Ry. Co.,* 52 Mich. 108. Crossings must be maintained according to the needs of the public and changed as necessity may require. *Atch., etc., Ry.* v. *Henry,* 57 Kan. 154; *Minn.* v. *St. Paul, etc., Ry.,* supra. The duty to so change is implied. *People* v. *U. P. Ry.,* 20 Colo. 186. In the principal case the railroad no longer crossed at grade, in which fact it differed from most of the cases above cited. However, in *Hatch, Commr.,* v. *S. B. & N. Y. R. R.,* supra, the defendant constructed its road above the highway, and after thirty years, the space beneath having become inadequate for the increased business, it was required to make the necessary changes, on the ground that the duty to restore is a continuous one. Likewise, where the tracks were lowered and the highway constructed on a bridge above, the railroad was required to maintain such highway. *Burritt* v. *N. H., etc., & N. Co.,* supra; *Cooke* v. *B. & L. R.,* supra. The conclusion that the duty to maintain was abrogated by elevating the tracks is therefore not easily reached.

SALES—CONSTRUCTION OF CONTRACT—TIME OF DELIVERY.—Defendant sent plaintiff quotations on its salt, stating that no exact date could be guaranteed for delivery, owing to the shipments being made by water. On June 1st the plaintiff ordered a cargo to arrive November 1st to 10th, and on June 11th the defendant replied that the order had been entered. Thereafter the plaintiff requested an earlier shipment, to which the defendant answered that it could not set a definite date, but would ship as soon as a boat could be secured. *Held,* that no contract was shown fixing any definite day for delivery, and damages for the alleged breach were refused. *Sumrell & McCoy* v. *International Salt Co. et al.* (1908), — N. C. —, 62 S. E. 619.

All the correspondence between the parties in this case indicates that some margin was contracted for, owing to the uncertainties of shipments by water. Two weeks one way or the other seem to have been understood by the parties as the limit. This was an order for salt for use in the winter season, and was placed in ample time for delivery by the date speci-

fied, and if no definite date can be decided upon for delivery, it should have been made within a reasonable time. The plaintiff was buying for the winter trade, and thus it appears as if time were of the essence of the contract within the rule laid down in *Norrington* v. *Wright,* 115 U. S. 188. The goods in the principal case were known not to be in such a condition that an immediate delivery was feasible, and so the law must imply an undertaking by the seller to deliver within a reasonable time. MECHEM, SALES, Vol. 2, § 1129. *Pope* v. *Terre Haute Car & Mfg. Co.,* 107 N. Y. 61. The conclusion of the court in the principal case is sound that treating the contract as closed by the letter of June 11 and the other letters as evidence throwing light upon the language used in the letters of June 1st and June 11th, no contract is shown by which any definite day was fixed for the arrival of the salt. But the conclusion reached by the dissenting judge as to the disposal of the case does not contradict this other conclusion and works out the case more satisfactorily. There was a contract for the sale of salt, and both parties seem to have understood that no definite day was set for delivery. An approximate date, however, was set, and it was incumbent upon the defendant to deliver within a reasonable time after that date. By December 4th the salt was not delivered, the winter business and plaintiff's trade standing were injured. Justice would seem to require the allowance of damages.

STATUTE OF FRAUDS—SALE OF GOODS—ACCEPTANCE OF PART OF GOODS—SUFFICIENCY.—The defendant made an offer to buy several thousand feet of the plaintiff's lumber then in defendant's possession. Plaintiff accepted the offer on the next day. Five days later defendant notified plaintiff that he would not purchase the lumber. *Held,* that there was no acceptance of the goods by defendant and hence no sale under the Statute of Frauds. *Godkin* v. *Weber* (1908), — Mich. —, 117 N. W. 628.

On the first trial of this case, reported in 114 N. W. 924, the court inclined to the view that there was a delivery and acceptance, sufficient under the Statute of Frauds to constitute an enforceable sale. On the rehearing the court decided, by a vote of five to three, that there was no acceptance of the lumber. The Statute of Frauds requires both delivery and acceptance. The question here is as to acceptance. BENJAMEN, SALES, REV. Ed., Vol. 1, § 163, points out the inconsistency of the cases on the point whether mere silence and delay in notifying refusal of goods constitute constructive acceptance, saying that "The fair deduction from the authorities seems to be that this is a question of degree, that a long and unreasonable delay would afford stringent proof of acceptance, while a shorter time merely constitutes some evidence to be taken into consideration with the other circumstances of the case." The leading opinion cites many cases to show that some affirmative act by the defendant is necessary to take the case out of the statute. It takes the position that the five days' delay was not evidence of acceptance, and that to hold otherwise would be to bind defendant by a void parol contract because he did not repudiate it. The dissenting opinion holds that as this was bulky property already deliv-